



Agricultural Marketing Service

7 CFR Part 984

[Docket No. 22-J-0011; AMS-SC-22-0010; SC22-981-1]

Walnuts Grown in California; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Order No. 984

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to Marketing Order No. 984 (Order), which regulates the handling of walnuts grown in California, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The California Walnut Board (Board), which locally administers the Order, recommended proposed amendments that would eliminate mandatory inspection and certification of inshell and shelled walnuts, and of shelled walnuts for processing; create a new mechanism for determining and collecting handler assessments; add authority to charge interest for late payments; establish an assessment rate of \$0.0125 per inshell pound of walnuts; expand the definition of “to handle” to include “receive”; and remove volume control authority. In addition, the Agricultural Marketing Service (AMS) proposed to make any such changes to the Order as may be necessary to conform to any amendment that may result from the hearing.

DATES: The referendum will be conducted from April 3 through April 21, 2023. The representative period for the purpose of the referendum is September 1, 2021, through August 31, 2022.

ADDRESSES: Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 308-2339 or Matthew Pavone, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Geronimo.Quinones@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on this proceeding by contacting Richard E. Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing published in the April 1, 2022, issue of the **Federal Register** (87 FR 19020) and a Recommended Decision published in the October 25, 2022, issue of the **Federal Register** (87 FR 64385).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175.

Notice of this rulemaking action was provided to tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

Preliminary Statement

This decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation and amendment of marketing agreements and orders (7 CFR part 900).

The proposed amendments in this decision are based on the record of a public hearing held via videoconference technology on April 19 and 20, 2022. Notice of this hearing was published in the **Federal Register** on April 1, 2022 (87 FR 19020). The Notice of Hearing contained five proposals submitted by the Board and one submitted by USDA.

The amendments proposed by the Board would amend quality control provisions to remove inspection and certification requirements, create a new mechanism for determining and collecting handler assessments, add authority to charge interest for late payments, establish an assessment rate of \$0.0125 per inshell pound of walnuts; expand the definition of “to handle” to include “receive”, and remove volume control authority.

The California walnut industry entered into a marketing order in 1948 to establish minimum quality requirements as a way to ensure industrial buyers and consumers have access to a reliable and consistent supply of wholesome walnuts. The Dried Fruit Association was the agency named in the marketing order as the agency responsible for performing grading services. Over time, buyer specifications and end-user requirements exceeded U.S. grade standards, making federally mandated inspection services duplicative. The California walnut industry seeks to streamline its handling operations by eliminating outgoing inspections and focusing on increasing consumption through promotion and market-building.

USDA proposed to make any such changes as may be necessary to the Order to conform to any amendment that may be adopted, or to correct minor inconsistencies and typographical errors. Accordingly, USDA recommended the following changes in the Recommended Decision: adding language regarding exemptions to § 984.67; removing the references to “merchantable” walnuts in §§ 984.22, 984.72, and 984.472(a) and (c); revising the heading in § 984.21; revising §§ 984.69(e) and 984.89(b)(4) to replace the

term “fiscal period” with “marketing year”; and revising the assessment rate provided in § 984.347.

Currently, § 984.67(b)(1) of the Code of Federal Regulations is missing language pertaining to two exemptions from assessments and quality regulations – specifically for green walnuts and walnuts directed to noncompetitive outlets. USDA determined that the language missing was inadvertently omitted in a prior rulemaking conducted in May 2020 and recommended that the missing language be added back to § 984.67. This recommendation was discussed at the hearing and all witnesses testified in support of adding the language back to § 984.67.

In § 984.11, “merchantable walnuts” are defined as “walnuts meeting the minimum grade and size regulations effective pursuant to § 984.50.” USDA has determined that if the proposed amendment to remove inspection and certification requirements is implemented, there would be no grade and size regulations in effect to distinguish “merchantable” walnuts from other walnuts. Witnesses at the hearing testified that this was their understanding of the effect of the proposed amendment and testified in favor of removing numerous references to the term “merchantable” in various sections, including § 984.48. Similarly, witnesses also supported amendment of § 984.472(b) to ensure that reporting requirements for shipped walnuts would continue. Accordingly, USDA proposed that references to “merchantable” be removed from other reporting requirements to ensure that appropriate reporting requirements continue to be in place.

Section 984.50 would continue to provide authority for grade, quality, and size regulations if such regulations are warranted in the future. If specific grade, quality, and size regulations are promulgated and implemented in the future, the term “merchantable walnuts,” defined as “walnuts meeting the minimum grade and size regulations effective pursuant to § 984.50,” would once again have meaning and effect. Accordingly, the

definition for “merchantable walnuts” and other sections that reference the word “merchantable” in the Order would not be affected by the proposed amendments. Specifically, §§ 984.11, 984.12, and 984.64 would continue to reference “merchantable walnuts.”

In addition, as noted in both the Notice of Hearing and the Recommended Decision, USDA recommended a clarifying change to the heading of § 984.21. USDA has determined that the heading, currently “Eligibility,” does not reflect the purposes of the provision, which defines handler inventory. Accordingly, USDA proposed to rename the section “Handler inventory.”

USDA also proposed to revise §§ 989.69(e) and 984.89(b)(4) to replace the term “fiscal period” with “marketing year.” The term “fiscal period” is not defined in the Order, whereas “marketing year” is defined and already used throughout the Order. USDA recommended this change to add clarity to the Order.

To conform with changes to the assessment mechanism, which would assess handlers on walnut receipts instead of inspected and certified volumes, the industry recommended revising the handler assessment rate in the regulations to reflect dollars per inshell pound of walnuts.

Additionally, as discussed in the Recommended Decision, there was an error in the proposed revision to § 984.347 in the Notice of Hearing, in which the proposed assessment rate was listed as \$.125 per inshell pound. Witnesses at the hearing testified that the assessment rate should be \$.0125 per inshell pound, and the Recommended Decision and this decision reflect the correct rate.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on November 4, 2022, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by November 25, 2022. No exceptions were filed.

USDA has subsequently identified an additional conforming change to the proposed regulatory language published in the Recommended Decision. In 7 CFR 984.69(d), the text currently refers to permitting advanced assessments when assessments based on the “current season’s certifications” are not yet available. Because § 984.51 would be removed and assessments would no longer be based on certifications, the language in proposed § 984.69(e) has been modified to refer to “assessments for the current marketing year.” The regulatory text included in this Secretary’s Decision reflects this change.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

During the hearing held April 19 and 20, 2022, interested parties were invited to present evidence on the probable regulatory impact on small businesses of the proposed amendments to the Order. The evidence presented at the hearing shows that the proposed amendments would not have a significant negative economic impact on a substantial number of small agricultural producers or handlers.

A small handler, as defined by the Small Business Administration (SBA) (13 CFR 121.201), is one that grosses less than \$30 million annually. A small walnut producer is one that grosses less than \$3.25 million annually.

Effective May 2, 2022, SBA issued a final rule updating small business size standards for agriculture (86 FR 18607). The tree nut farming (NAICS 111335) size

standard changed from \$1 million to \$3.25 million. The witnesses who identified themselves as small producers did so using the SBA size standard in effect at the time of the hearing (\$1.0 million of gross annual receipts); they are also small under the new standard of \$3.25 million of gross annual receipts.

A total of nine witnesses testified at the hearing. Of the nine witnesses, seven appeared and offered testimony as growers or handlers. Five of these seven witnesses were growers, and four of the five grower witnesses were also handlers. Two of five grower witnesses testified that they were small walnut growers according to the former SBA definition of \$1.0 million, and three were large.

Of the six handler witnesses, two were small and four were large. Of the four grower witnesses who were also handlers, one was a small handler, and three were large. There were two additional handler witnesses, one small and one large.

Of the remaining two witnesses, one testified from the perspective of academia and the other witness testified as a representative of the California Walnut Board.

All witnesses expressed their support for the proposed amendments and stated that they expect to see significant benefits (cost savings) from the amendments.

Walnut Industry Background and Overview

According to the hearing record, there are approximately 4,500 producers and 85 handlers in the production area. Record evidence includes reference to a study showing that the walnut industry contributes 85,000 jobs to the economy, directly and indirectly.

Record evidence showed that approximately 82 percent of California's walnut handlers (70 out of 85) shipped merchantable walnuts valued under \$30 million during the 2018-2019 marketing year and would therefore be considered small handlers according to the SBA definition.

Data in the hearing record from the 2017 Agricultural Census, published by USDA'S National Agricultural Statistics Service (NASS), showed that 86 percent of the

California farms growing walnuts had walnut sales of less than \$1 million. In the 2017 Agricultural Census, the largest sales value size category for walnuts was \$1.0 million.

To estimate the percentage of small walnut farms, using NASS data from the hearing record, the first step was computing a 3-year average crop value, which was roughly \$1.077 billion for the period 2018-19 to 2020-21. The average walnut-bearing acreage over that same 3-year period was 372,500 acres. Dividing crop value by bearing acreage shows a per-acre revenue estimate of \$2,892. Using these numbers, it would take approximately 1,124 acres (\$3,250,000 divided by \$2,892) to yield roughly \$3,250,000 in annual walnut sales. The 2017 Agricultural Census data show that 94 percent of walnut farms in 2017 were below 1,000 acres. Therefore, 94 percent or more of California walnut farms would be considered small businesses according to the current SBA definition of \$3.25 million in gross annual receipts.

Hearing evidence showed that the period from walnut tree planting to production ranges from 5 to 7 years, and that production levels each year are somewhat affected by the alternate bearing tendency. The pricing downturn that began in 2015 somewhat diminished the rate of new plantings, but about 36,000 previously planted acres are expected to come into production in the next 3 years (2023 to 2026). These are high-yield varieties, and therefore the new acres are expected to be more productive than the walnut acreage being removed.

According to the record, generally all domestic production of walnuts is grown in California's Central Valley region, which includes the Sacramento Valley in the north and the San Joaquin Valley in the south. The San Joaquin Valley is one of only five major Mediterranean-type climates in the world that are ideal for growing nuts. Over the past 10 years, walnut acreage has migrated north for better water availability. Production in the northern part of the Central Valley is expected to grow significantly, and the proportion of total production in the south is expected to decline.

Walnut trees bloom in the spring, and the harvest for early varieties starts in September. Harvesting for later varieties starts in October and sometimes continues into November. As soon as the nuts are harvested, they must be hulled (removal of the green husk) and dried. Freshly harvested nuts have too high a moisture content for long-term storage, and they need to be hulled and dried quickly to preserve quality and to minimize mold and rancidity. Growers still own the nut at this point, according to hearing evidence.

The processor (handler) then buys the nuts based on the cleaned, hulled, and dried weight. The handlers process and store them before and after the value-added steps and before shipping them into distribution channels.

Once received by the handler, the walnuts go into refrigerated or bulk storage, depending on the type of product that the handler intends to produce. Smaller lots, such as for minor varieties, are put into bin storage. Once the walnuts are warehoused and fumigated to eliminate insects, a sample is taken to determine the value of the product to the producer. The walnuts are tested for kernel content, edible kernel content, defect levels, and color. The lighter the color, the greater the value. The three predominant colors are light, light amber, and amber.

The shelling process removes most of the shell, typically leaving about 98 percent kernel and 2 percent shell. The resulting lot has nuts with a mixture of colors and approximately six different sizes, ranging from eight-of-an-inch square up to a half kernel.

Walnuts generally have a 12-month shelf life, which can be moderately increased through improved storage conditions and may be reduced if storage conditions are not ideal. Cold storage has facilitated year-round sales and marketing. Witnesses stated that advancements in processing and packaging technologies continue to improve product quality, consistency, and shelf life.

Some packaging methods, including vacuum packing, will increase shelf life and help maintain quality. Walnuts can also be pasteurized to reduce pathogens. Modified atmosphere storage requires substantial capital, including automation of storage chamber loading and unloading because the low oxygen environment is dangerous for forklift drivers.

On the handler processing lines, key pieces of equipment are laser sorters and optical camera sorters, which can sort by color and shape. Broad spectrum analyses (using infrared and ultraviolet light) are increasingly effective at identifying defects. Mechanical air injection systems use jets of air to remove individual nuts identified as defective.

A key factor in quality improvement are new varieties, including Chandler, Howard, Pillory, Ivanhoe, and Sawano.¹ With these varieties, shell removal is much easier, leaving far fewer fragments and pieces. Recent technology improvements have also greatly reduced the incidence of foreign material and shell pieces to a level that is far below what is allowed under USDA standards, which were established decades earlier.

With the new varieties, the kernel color is much lighter, and the nuts are larger. In addition, advances in processing equipment produce a much higher percentage of “pristine halves.” Witnesses testified that these three key characteristics yield more money to industry stakeholders but are not accounted for in USDA standards.

According to hearing evidence, prior to the moratorium on the enforcement of mandatory inspection requirements that began on September 1, 2021, inspections for large volume handlers were typically performed by inspectors employed by the Dried Fruit Association (DFA), which is the Board’s inspection agency of record, working from a space close to their own quality assurance (QA) staff. DFA conducted quality tests

¹ The Chandler variety comprises 58 percent of total walnut production. Three varieties (Chandler, Howard, and Tulare) make up 85 percent of total walnut volume.

from in-line samples with processes that largely paralleled those of the handler QA staff, but DFA applied the less stringent USDA standards. For smaller volume handlers, DFA staff tested nuts based on samples from packaged products on the packing floor (floor inspection). For the mandatory outbound inspection, no product could leave the processing facility without USDA certification issued by DFA.

Before USDA implemented the inspection moratorium, operational inefficiencies for handlers included sometimes having to wait for qualified DFA inspection staff to show up to certify lots in a timely manner, adding to an already challenging shipping environment. Hearing evidence suggests that the elimination of mandatory inspections and being able to self-certify according to customer specifications that are more stringent than USDA standards would be a significant benefit of the proposed changes to handlers of all sizes. Some handlers may continue to use DFA inspection services for quality control; however, hearing evidence shows the industry is undergoing a transition away from the traditional practice of third-party inspections for greater cost savings.

According to the record, the elimination of mandatory inspection and certification prevents the Board from collecting assessments under the current regulations. The proposed new assessment mechanism would be based on walnuts received instead of walnuts certified, and would allow the Board to resume collecting assessments. Witnesses reported that the proposed amendment to collect handler assessments in three installments (to be paid in February, May, and August) rather than in monthly installments as currently provided under the order, would further improve operational efficiency and reduce paperwork burden for handlers.

In summary, hearing evidence points to major technological improvements in sorting, processing, and storage – and to the adoption of new varieties - as key evidence of how current industry practices result in walnut quality that exceeds USDA standards, making mandatory outgoing inspection unnecessary.

Estimated Economic Impact of Eliminating Mandatory Inspection

A key economic impact of the marketing order amendment is the cost reduction to industry stakeholders associated with eliminating mandatory inspection. Hearing evidence showed that an estimate of the mandatory inspection cost, pre-moratorium, is approximately \$6 million per year.

Table 2 illustrates the inspection cost estimate. Multiplying the total quantity of California walnuts marketed in 2020 (783,500 tons) times the average inspection cost of \$7.7024 per ton yields the total annual mandatory inspection cost estimate of \$6,034,830 shown in Table 2. These numbers represent the costs incurred by handlers for the inspection services supplied by DFA.

The proportion of the crop marketed as inshell and shelled are 42 and 58 percent, respectively. These proportions are used to show how the \$6.035 million inspection cost is allocated to the inshell and shelled portions of the total U.S. walnut market.

Table 2 Estimated Annual Cost Mandatory Walnut Inspection 1/					
	Inshell	Shelled	Total	Computational Detail	
Share of sales (%)	42%	58%	100%	A	
Volume (tons)	329,070	454,430	783,500	B	A*total volume
Inspection Cost (\$ per ton) 2/	\$6.09	\$8.87	\$7.7024	C	
Total inspection cost 2/	\$2,004,036	\$4,030,794	\$6,034,830	D	B*C

1/ This table is based on Exhibit 16A of the walnut marketing order amendment hearing, which used data supplied by California Walnut Board.

2/ Total inspection cost of \$6,034,830 in this table is the sum of the inshell and shelled cost and represents a slight upward adjustment from the total cost figure of \$6,032,950 in hearing Exhibit 16A. This revised total cost figure was used to compute a revised inspection cost per ton of \$7.7024, representing an average industry cost, combining inshell and shelled. This is slightly higher than the \$7.70 cost figure presented in Exhibit 16A.

Hearing evidence also pointed to other benefits, such as lower indirect costs to handlers. Witnesses stated that handlers would benefit from reduced operational process

redundancies, resulting in lower associated costs and administrative burdens. An additional efficiency for handlers is that the proposed new marketing order assessment mechanism utilizes the same process already in use by handlers for their payment to the California Walnut Commission.

In addition, producers may also benefit from higher grower returns through cost savings passed on from increased handler efficiencies.

The record shows that there would be no negative quality implications from implementing the proposed amendments, and consumers already benefit from California walnut quality that surpasses USDA grade standards. Consumers may also benefit from lower prices resulting from reduced handler costs. If the proposed amendments and accompanying conforming changes were implemented, both benefits and costs savings could be anticipated. For the reasons described above, it is determined that the benefits of eliminating mandatory inspection and certification of inshelled and shelled walnuts, and of shelled walnuts for processing; creating a new mechanism for determining and collecting handler assessments; adding authority to charge interest for late payments; establishing an assessment rate of \$0.0125 per inshell pound of walnuts; expanding the definition of “to handle” to include “receive”, and removing volume control authority would modernize and align the Order with current market-driven practices that would result in a more efficient industry.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the Order and to assist in the marketing of California walnuts.

Board meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meetings and the hearing to participate in

Board deliberations on all issues. All Board meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. Interested persons are invited to submit information on the regulatory impacts of this action on small businesses.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Paperwork Reduction Act

Current information collection requirements that are part of the Federal marketing order for California walnuts (7 CFR Part 984) are approved under OMB No. 0581-0178 Vegetables and Specialty Crops. No changes in these requirements are anticipated because of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Civil Justice Reform

The amendments to the Order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded

the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the October 25, 2022, issue of the **Federal Register** (87 FR 64385), and as revised in this Secretary's Decision, are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Walnuts Grown in California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered that this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 through 900.407) to determine whether the annexed order amending the order regulating the handling of walnuts grown in California is approved or favored by growers, as defined under the terms of the order, who during the representative period were engaged in the production of walnuts in the production area. The referendum dates are April 3 through April 21, 2023. The representative period for the conduct of such referendum is hereby determined to be September 1, 2021, through August 31, 2022.

The agents of the Secretary to conduct such referendum are hereby designated to be Joshua R. Wilde, Marketing Specialist, and Gary Olson, Regional Director, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724 or Email: Joshua.R.Wilde@usda.gov or GaryD.Olson@usda.gov, respectively.

Order Amending the Order Regulating the Handling of Walnuts Grown in California²

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further amendment of Marketing Order No. 984, regulating the handling of walnuts grown in California.

Upon the basis of the record, it is found that:

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

² This order shall not become effective unless and until the requirements of §900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of walnuts grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of walnuts grown in California; and

(5) All handling of walnuts grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of walnuts grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision published in the October 25, 2022, issue of the **Federal Register** (87 FR 64385), and as revised in this Secretary's Decision, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Recommended Further Amendment of the Marketing Order

For the reasons set out in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984 – WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise 984.12 to read as follows:

§ 984.12 Substandard walnuts.

Substandard walnuts means all walnuts (whether inshell or shelled) that do not meet the minimum standard prescribed for merchantable walnuts whenever regulations are in effect pursuant to § 984.50.

3. Revise § 984.13 to read as follows:

§ 984.13 To handle.

To handle means to receive, pack, sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, into the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower. However, sales and deliveries by a grower to handlers, hullers, or other processors within the area of production shall not, in itself, be considered as handling by a grower. The term “to handle” shall not include sales and deliveries within the area of production between handlers.

4. Amend § 984.21 by revising the section heading to read as follows:

§ 984.21 Handler inventory.

* * * * *

5. Amend § 984.22 by removing the word “merchantable” in paragraphs (a) and (b).

§§ 984.23 and 984.26 [Removed and Reserved]

6. In §§ 984.23 and 984.26, lift the stays of May 7, 2020, and remove and reserve the sections.

7. Revise § 984.32 to read as follows:

§ 984.32 To certify.

To certify means the issuance of a certification of inspection of walnuts in accordance with regulations issued pursuant to § 984.50.

§ 984.33 [Removed and Reserved]

8. In § 984.33, lift the stay of May 7, 2020, and remove and reserve the section.

9. Amend § 984.37 by revising paragraphs (b) and (c)(4) to read as follows:

§ 984.37 Nominations.

* * * * *

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their respective Districts. All handlers' votes shall be weighted by the weight of inshell walnuts handled by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) * * *

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the weight of inshell walnuts handled by each handler during the preceding marketing year. Each handler in the

production area may vote for handler member nominees and their alternates of this paragraph (c)(4). However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this paragraph (c)(4) shall be the nominee for that position.

* * * * *

10. In § 984.48:

- a. Revise the introductory text of paragraph (a);
- b. Remove the words “merchantable and substandard” in paragraph (a)(3);
- c. Lift the stays of May 7, 2020, on paragraphs (a)(6) and (7) and remove both paragraphs; and
- d. Redesignate paragraphs (a)(8) and (9) as paragraphs (a)(6) and (7), respectively.

The revision reads as follows:

§ 984.48 Marketing estimates and recommendations.

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least 60% of the Board and shall include the following:

* * * * *

§ 984.49 [Removed and Reserved]

11. In § 984.49, lift the stays of August 7, 1995, and May 7, 2020, and remove and reserve the section.

12. In § 984.50, lift the stay of May 7, 2020, on paragraph (e) and revise the section to read as follows:

§ 984.50 Grade, quality, and size regulations.

(a) The Board may recommend, subject to the approval of the Secretary, regulations that:

(1) Establish handling requirements for particular grades, sizes, or qualities, or any combination thereof, of any or all varieties or classifications of walnuts during any period;

(2) Establish different handling requirements and tolerance limits for particular grades, sizes, or qualities, or any combination thereof, for different market destinations;

(3) Establish different handling requirements for the processing of shelled walnuts and the handling thereof; and

(4) Establish inspection and certification requirements for the purposes of this paragraph (a) and paragraph (b) of this section.

(b) During any period, regulations issued under this section are in effect, no handler shall handle or process walnuts into manufactured items or products unless they meet the applicable requirements under this section as evidenced by certification acceptable to the Board.

(c) Regulations issued under this section may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the Board and approval by the Secretary, or other available information; or

(2) That regulations issued under this section no longer tend to effectuate the declared policy of the Act.

§§ 984.51 and 984.52 [Removed and Reserved]

13. Remove and reserve §§ 984.51 and 984.52

§§ 984.54 and 984.56 [Removed and Reserved]

14. In §§ 984.54 and 984.56, lift the stay of May 7, 2020, and remove and reserve the sections.

15. Revise § 984.64 to read as follows:

§ 984.64 Disposition of substandard walnuts.

During any period when regulations are in effect pursuant to § 984.50, substandard walnuts may be disposed of only for manufacture into oil livestock feed, or such other uses as the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts and with proper safeguards to prevent such walnuts from thereafter entering channels of trade in such markets. Each handler shall submit, in such form and at such intervals as the Board may determine, reports of his production and holdings of substandard walnuts and the disposition of all substandard walnuts to any other person, showing the quantity, lot, date, name and address of the person to whom delivered, the approved use and such other information pertaining thereto as the Board may specify.

§ 984.66 [Removed and Reserved]

16. In § 984.66, lift the stay of May 7, 2020, and remove and reserve the section.

17. In § 984.67:

- a. Lift the stay of May 7, 2020, on paragraph (a) and remove the paragraph;
- b. Redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively; and
- c. Revise newly designated paragraph (a).

The revision reads as follows:

§ 984.67 Exemptions.

(a) *Exemptions from assessments and quality regulations.*

(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his production free of the regulatory and assessment provisions of this part if he sells such walnuts in the area of production directly to consumers under the following types of exemptions:

- (i) At roadside stands and farmers' markets;

(ii) In quantities not exceeding an aggregate of 500 pounds of inshell walnuts of 200 pounds of shelled walnuts during any marketing year (at locations other than those specified in paragraph (a)(1)(i) of this section); and

(iii) If shipped by parcel post or express in quantities not exceeding 10 pounds of inshell walnuts or 4 pounds of shelled walnuts to any one consumer in any one calendar day.

(2) *Green walnuts.* Walnuts which are green and which are so immature that they cannot be used for drying and sale as dried walnuts may be handled without regard to the provisions of this part.

(3) *Noncompetitive outlets.* Any person may handle walnuts, free of the provisions of this part, for use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture pursuant to an authorized governmental diversion program.

* * * * *

18. In § 984.69, lift the stay of May 7, 2020, on paragraph (b) and revise the section to read as follows:

§ 984.69 Assessments.

(a) *Requirement for payment.* Each handler shall pay the Board, on demand, his or her pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per inshell pound of walnuts fixed by the Secretary times the pounds of walnuts received by him or her for his or her own account (except as to receipt from other handlers on which assessments have been paid). At any time during or after the marketing year the Secretary may increase the assessment rate as necessary to cover authorized expenses and each handler's pro rata share shall be adjusted accordingly.

(b) *Assessment rate.* The assessment rate set out may be modified by the Secretary, based upon a recommendation of the Board or other available data.

(c) *Late payment.* If a handler does not pay assessments within the time prescribed by the Board, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the Board with approval of the Secretary.

(d) *Accounting.* If at the end of a marketing year the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (d)(2) or (3) of this section, it shall be refunded to handlers from whom collected, and each handler's share of such excess funds shall be the amount of assessments he or she has paid in excess of his or her pro rata share of the actual expenses of the Board.

(2) Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year provided each handler's share of such excess shall be made available to him or her by the Board within five months after the end of the year.

(3) The Board may carry over such excess into subsequent marketing years as a reserve: Provided, that funds already in reserve do not exceed approximately two years' budgeted expenses. In the event that funds exceed two marketing years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two marketing years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any marketing year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended; and

(iv) To meet any other such costs recommended by the Board and approved by the Secretary.

(e) *Advanced assessments and commercial loans.* To provide funds for the administration of the provisions of this part during the part of a marketing year when neither sufficient operating reserve funds nor sufficient revenue from assessments for the current marketing year are available, the Board may accept payment of assessments in advance or may borrow money from a commercial lending institution for such purposes.

(f) *Termination.* Any money collected from assessments hereunder and remaining unexpended in the possession of the Board upon termination of this part shall be distributed in such manner as the Secretary may direct.

19. Revise § 984.72 to read as follows:

§ 984.72 Reports of walnuts handled.

Each handler who handles walnuts, inshell or shelled, at any time during a marketing year shall submit to the Board in such form and at such intervals as the Board may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Board may specify.

20. Revise § 984.77 to read as follows:

§ 984.77 Verification of reports.

For the purpose of verifying and checking reports filed by handlers or the operations of handlers, the Secretary and the Board through its duly authorized representatives shall have access to any premises where walnuts and walnut records are held. Such access shall be available at any time during reasonable business hours. Authorized representatives shall be permitted to inspect any walnuts held and any and all records of the handler with respect to matters within the purview of this part. Each

handler shall maintain complete records on the receiving, holding, and disposition of both inshell and shelled walnuts. Each handler shall furnish all labor necessary to facilitate such inspections at no expense to the Board or the Secretary. Each handler shall store all walnuts held by him or her in such manner as to facilitate inspection and shall maintain adequate storage records, which will permit accurate identification of respective lots and of all such walnuts held or disposed of theretofore. The Board, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

§ 984.89 [Amended]

21. In § 984.89 (b)(4), remove the term “fiscal period” and add in its place the term “marketing year”.

22. Revise § 984.347 to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2023, an assessment rate shall be fixed at \$0.0125 per inshell pound of California walnuts.

§ 984.450 [Removed and Reserved]

23. In § 984.450, lift the stays of May 7, 2020, on paragraphs (a) and (b) and remove and reserve the section.

§ 984.451 [Removed and Reserved]

24. In § 984.451, lift the stay of May 7, 2020, on paragraph (c) and remove and reserve the section.

§ 984.452 [Removed and Reserved]

25. Remove and reserve § 984.452.

§ 984.456 [Removed and Reserved]

26. In § 984.456, lift the stay of May 7, 2020, and remove and reserve the section.

§ 984.459 [Amended]

27. In § 984.459, remove and reserve paragraph (a)(3).

§ 984.464 [Removed and Reserved]

28. In § 984.464, lift the stay of May 7, 2020, on paragraph (a) and remove and reserve the section.

29. Revise § 984.472 to read as follows:

§ 984.472 Reports of walnuts, received, shipped, and committed.

(a) Reports of walnuts shipped during a month shall be submitted to the Board on California Walnut Board (CWB) Form No. 6 not later than the 5th day of the following month. Such reports shall include all shipments during the preceding month and shall show for inshell and shelled walnuts: the quantity shipped; whether they were shipped into domestic or export channels; and for exports, the quantity by country of destination. If a handler makes no shipments during any month, he/she shall submit a report marked “None.” If a handler has completed his/her shipments for the season, he/she shall mark the report “Completed,” and he/she shall not be required to submit any additional CWB Form No. 6 reports during the remainder of that marketing year.

(b) Reports of walnuts purchased directly from growers by handlers who are manufacturers or retailers shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were purchased. Such reports shall show the quantity of walnuts purchased.

(c) Reports of walnuts on which handlers have made purchase commitments with buyers during the month, but which have not yet been shipped, shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were committed. Such reports shall show the quantity of walnuts committed in either inshell or shelled pounds. If the handler made no commitments during any month, he/she shall mark “None” in the “Purchase Commitments” section of CWB Form No. 6.

30. Revise § 984.476 to read as follows:

§ 984.476 Report of walnut receipts produced outside California or the United States.

Each handler who receives walnuts from outside California or the United States shall file with the Board, on CWB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before December 5 for such walnuts received during the period September 1 to November 30; on or before March 5 for such walnuts received during the period December 1 to February 28 (February 29 in a leap year); on or before June 5 for such walnuts received during the period March 1 to May 31; and on or before September 5 for such walnuts received during the period June 1 to August 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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